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Toys 'R' Us Faces a U.S. Antitrust Inquiry

Regulators Probe Whether Retailer Stifled Discounting by Rivals, Violating an 11-Year-Old Order; Baby Strollers Are an Issue

By JOSEPH PEREIRA

Federal antitrust enforcers are investigating whether Toys "R" Us Inc. used its market clout to stifle discounting by retail competitors and force consumers to pay higher prices for baby products.

The Federal Trade Commission is investigating whether the retail giant may have violated an 11-year-old FTC order to abstain from anticompetitive tactics, according to people familiar with the matter. It is unclear whether the probe will result in any enforcement action.



Associated Press

A Toys 'R' Us shopper carries a bag outside a store in Redwood City, Calif., earlier this month. The retailer could face a new Federal Trade Commission complaint for allegedly trying to fix the prices of baby products.

Toys "R" Us consented to the decree in 1998, after an administrative law judge ruled that the retailer illegally wielded its market power to strong-arm toy makers into

boycotting [Costco Wholesale Corp.](#) and other discount warehouse clubs by threatening to stop selling any toys also being sold by the clubs.

Toys "R" Us could face a new FTC complaint for allegedly trying to fix the prices of baby products, people familiar with the matter said. The products include strollers, high chairs, car seats and breast pumps sold at Babies "R" Us, a unit of Toys "R" Us.

A spokeswoman for the Wayne, N.J., company said, "The FTC began looking into the issue a year ago and we have cooperated fully since that time." An FTC spokesman declined to comment.

The probe is a signal that federal enforcers are taking a more aggressive role in one of the most contentious issues in retailing: whether manufacturers and retailers can agree to set a minimum retail prices on products.

FTC investigators are expected to review numerous emails exchanged among Babies "R" Us and various manufacturers.

One set of email exchanges filed in a class-action case appears to show Babies "R" Us urging the Britax Childcare unit of Carlyle Group LLC to get Target Corp. to raise prices. The subject field in the email exchanges said: "Target has not raised prices."

"Did Target commit to you when they will raise their prices?" Cesar Garcia, director of merchandising at Babies "R" Us, allegedly asked in an email dated Jan. 6,

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According to the emails, a couple of hours later, Scott Doerstling, a Britax representative at the time, allegedly responded: "Target said they would honor the new MSRP's [Manufacturer Suggested Retail Price] ... please be assured that Britax's goal is to have uniform MSRP's in the market place."

Five days later, according to court records, Mr. Doerstling allegedly sent another email to Mr. Garcia reassuring him that "We are in communications with them [Target]. We understand your position and are doing what we 'legally' can do to ensure MSRP harmony in the marketplace."

Toys "R" Us didn't reply to an email seeking comment about its remarks regarding Target's prices.

Another court document suggests Babies "R" Us canceled orders for some products from Medela Inc. of Switzerland because the company wasn't being tough enough on Internet retailers that didn't abide by minimum-pricing agreements. An internal Medela memo filed in the case indicated that Medela, under apparent pressure, cut off supplies to 17 Internet retailers.

Medela officials couldn't be reached for comment.

The FTC has requested documents from two law firms -- New York-based Faruqi & Faruqi LLP and Hagens Berman Sobol Shapiro LLP of Seattle -- that are litigating cases alleging price-fixing against Babies "R" Us in U.S. District Court in Philadelphia, according to people familiar with the matter.

Kendall Zylstra, a Faruqi attorney representing two online retailers, Babyage Inc. and Baby Club of America Inc., said he had been contacted by the FTC "pursuant to the investigation."

Elizabeth Fegan, a Hagens Berman attorney representing a group of consumers in a class-action suit against Babies "R" Us, also confirmed being contacted by the FTC in same probe. That suit also is being heard in U.S. District Court in Philadelphia.

It isn't clear whether the FTC also is looking at the five manufacturers named as defendants in the lawsuits: Maclaren Ltd. of Britain; Italy's Peg Perego SpA; Sweden's Baby Bjorn AB; Medela; and Britax. The

companies have denied any wrongdoing.

For nearly a century, price-fixing agreements generally were illegal. But in 2007, the U.S. Supreme Court ruled such pacts could be lawful if the benefits to consumers -- better service, for example -- outweighed the harm of higher prices.

The high-court ruling emboldened a growing number of manufacturers to establish minimum-pricing agreements with retailers. Under such pacts, discount retailers risk having their supplies cut off if they sell the goods below the fixed minimum price.

In a speech delivered last week to the National Association of Attorneys General in New York, Christine Varney, the new head of the U.S. Justice Department's antitrust division, called enforcement under the Supreme Court's pronouncement "one of the most important challenges facing state Attorneys General."

Ms. Varney added: "There is a greater likelihood that a [fixed price] restraint is anticompetitive if retailers coerced the manufacturer to adopt it."

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